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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,388	03/23/2001	George Henry Hoffman	41556/04030	7842

22428 7590 10/27/2004

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EXAMINER

ZEENDER, FLORIAN M

ART UNIT PAPER NUMBER

3627

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/816,388	<b>Applicant(s)</b> HOFFMAN ET AL.	
	<b>Examiner</b> F. Ryan Zeender	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-7,9,11-13,15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,9,11-13,15,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/28/2004</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1, 3, 5, and 6 are objected to because of the following informalities: In claim 1, paragraph "b", line 1, it is not clear whether the terminology, "a supply chain computer" refers to the same computer claimed in paragraph "a", line 3, or to a separate distinct computer. Appropriate clarification/correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 5-7, 9, 11-13, 15, 17, and 18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-30 of copending Application No. 09/816,358. Although the conflicting claims are not identical, they are not patentably distinct from each other because a gas station outlet could be an "accommodation outlet" or at least have the same supply chain participants, so to use either one of these outlets in the management of the supply chain would have been an obvious design choice.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 5-7, 9, 11-13, 15, 17, and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In each of the independent claims, paragraph "a", the negative limitation, "completed sale amounts not generated by sales via the network" is not supported by the original specification.

***Claim Rejections - 35 USC § 103***

Claims 1, 3, 5-7, 9, 11-13, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. in view of Hafner et al. and Lidow US2002/0019761A1.

Shavit et al. disclose, or inherently teach, all of the limitations of the claims including: supply chain management using a network; a supply chain computer of an independent supply chain manager (i.e., "agent"; See for example Col. 6, line 11) receiving data from a plurality of independent outlets; the use of distributors and

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suppliers; providing the data at the sole discretion of the outlet (See for example Col. 9, lines 43-69); parsing the data by the distributor and supplier (See for example Col. 13); generating an electronic order (See for example Col. 6, lines 19-51); transmitting data to distributors and suppliers (See for example Col. 6, lines 9-13); forecasting activity in the supply chain using the data (See for example Col. 7, line 19); sending the electronic order form to the distributor; security and limited access (see for example, Col. 9, lines 43-56), and verification of identity and password data (see for example, Col. 10, lines 1-15);

Shavit et al. lacks the specific teaching of the outlets being gas station outlets of a gas station franchise; the data comprising completed sale amounts of gas station goods and services which sales are not generated on the network; and the specifics of the type of forecasting information.

Hafner et al. teach that it is well known to receive point-of-sale data for inventory control and forecasting.

Lidow teaches that it is well known to have a plurality of customers transmit data to suppliers, and forecasting aggregated activity in the supply chain.

It would have been obvious to one of ordinary skill in the art to modify Shavit et al. to have the data include actual sale amounts, in view of Hafner et al., in order for supplier's to manage their retailer's inventory with a minimal amount of human intervention (See Hafner et al. Col. 2, lines 17-25).

It would have been further obvious to one of ordinary skill in the art to modify Shavit et al. to forecast aggregated activity in the supply chain, in view of Lidow, in order

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to "warn suppliers of future demands so that the suppliers can anticipate demands and plan inventory accordingly" (See Lidow, paragraph 0018).

It would have been an obvious design choice at the time of the invention to one of ordinary skill in the art to have the outlets be gas station outlets and the products be gas station goods and services (of which sales are not generated on a network), in order to provide a system that can cut costs at each level of the distribution chain and permit new and previously impossible or impractical transactions and business arrangements" (Shavit, Col. 2, lines 1-5), and thus be able to pass on the lower costs to gas station end users.

Further, the Examiner takes Official Notice that it was well known for gas station outlets to operate within a "franchise" supply chain.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

F. Zeender  
Primary Examiner, A.U. 3627  
October 22, 2004

  
F. RYAN ZEENDER  
PRIMARY EXAMINER